

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEYONTA DEWAYNE QUINN,

Defendant-Appellant.

UNPUBLISHED

June 26, 2014

No. 315288

Muskegon Circuit Court

LC No. 10-060038-FC

Before: MURPHY, C.J., and SHAPIRO and RIORDAN, JJ.

PER CURIAM.

Defendant was convicted of two counts of assault with intent to commit murder, MCL 750.83, two counts of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b, and one count of carrying a concealed weapon (CCW), MCL 750.227. He was sentenced to 16 to 30 years' imprisonment for the assault convictions, 2 years' imprisonment for the felony-firearm convictions, and 5 years' imprisonment for the CCW conviction. Defendant does not challenge his convictions on appeal; rather, he raises a single sentencing issue. We affirm.

Defendant's convictions arise out of an incident in which he and an accomplice discharged their firearms multiple times at occupants in a motor vehicle. Defendant had been standing outside of the parked vehicle speaking to its occupants when he brandished a gun and started firing. As the vehicle sped off, defendant and his accomplice continued shooting repeatedly at the vehicle. One of the car's occupants was shot in the head and another was shot in the leg; both survived. A third occupant of the vehicle was not struck by gunfire. The victims knew defendant and his accomplice and identified them as the shooters.

At sentencing, the minimum guidelines range was set at 135 to 225 months. Relevant here, offense variable (OV) 3, MCL 777.33, was scored at 25 points on the basis that a "[l]ife threatening or permanent incapacitating injury occurred to a victim." MCL 777.33(1)(c). Defendant did not object to the scoring of OV 3. Additionally, OV 12, MCL 777.42, was scored at five points on the basis that "[o]ne contemporaneous felonious criminal act involving a crime against a person was committed." MCL 777.42(1)(d). The trial court scored five points because the uninjured third occupant of the vehicle was in the line of fire. Defendant did not object to the scoring of OV 12.

On appeal, defendant solely argues, pursuant to *Alleyne v United States*, __ US __; 133 S Ct 2151; 186 L Ed 2d 314 (2013), that his constitutional rights under the Sixth and Fourteenth Amendments to a jury trial and to have the prosecution prove its case beyond a reasonable doubt were violated, given that the trial court engaged in impermissible judicial fact-finding in regard to OV 3 and OV 12. In *Alleyne*, the United States Supreme Court held that facts that increase a mandatory minimum sentence must “be submitted to the jury and found beyond a reasonable doubt.” *Id.* at 2163. In *People v Herron*, 303 Mich App 392, 405; __ NW2d __ (2013), this Court rejected application of *Alleyne* to Michigan’s sentencing scheme:

In essence then, defendant's . . . argument is reduced to reliance on *Alleyne* alone. We conclude that defendant's argument fails in light of the pains the Supreme Court took in Part III–C of its opinion to distinguish judicial fact-finding to establish a mandatory minimum floor of a sentencing range from the traditional wide discretion accorded judges to establish a minimum sentence within a range authorized by law as determined by a jury verdict or a defendant's plea. We hold that judicial fact-finding to score Michigan's guidelines falls within the wide discretion accorded a sentencing judge in the sources and types of evidence used to assist . . . [a court] in determining the kind and extent of punishment to be imposed within limits fixed by law. Michigan's sentencing guidelines are within the broad sentencing discretion, informed by judicial factfinding, . . . [that] does not violate the Sixth Amendment. [Citations and internal quotation marks omitted.]

We are bound by *Herron* under MCR 7.215(J)(1); therefore, we reject defendant’s argument.

Affirmed.

/s/ William B. Murphy
/s/ Douglas B. Shapiro
/s/ Michael J. Riordan